IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO.158 OF 2007

Hanmanat Sitaram Bansode .. Appellant
v/s.
Smt.Sitabai Janardhan Pawar and others .. Respondents

Mr.Surel S. Shah for the appellant.

CORAM : A.M. KHANWILKAR, J.
DATED : 5TH JULY, 2007

P.C.

Heard counsel for the appellant. The only contention pressed before me is that no decree could have been passed in the fact situation of the present case, having regard to the provisions of section 16(c) and explanation II thereto. This argument is canvassed on the premiss that the witness examined by the plaintiff who was witness to the execution of the documents in clear terms states that the earnest money amount of Rs.27,000/- was not paid in his presence at the time of execution of the document. This evidence has been considered by the two courts below and both the courts have found that, that does not take the matter any further. Inasmuch as that evidence cannot be read to mean that the witness has, in no uncertain terms, stated that the earnest money amount of Rs.27,000/- was never paid to the respondents. Indeed, the respondents have asserted that they did not receive the amount of Rs.27,000/- at all. The appellant, however, has deposed to the contrary. The claim of the plaintiff will have to be preferred as the fact so deposed is supported by the document executed on the given date. The execution of that document is not in dispute.

The document clearly records the position that the amount of Rs.27,000/- has been received by the defendant-appellant while the document was executed. The version of the appellant-defendant is only the bare testimony and not supported by any contemporaneous material. The evidence of the witness P.W.2 will not be of any aid to the appellant-defendant. It is not the argument of the appellant that there is no averment in the plaint about continuous readiness and willingness to perform the obligation under the suit agreement by the plaintiff. Thus understood, no question of law arises much less substantial question of law which is required for entertaining in the second appeal. Hence dismissed.

(A.M. KHANWILKAR, J.)